

Southern Railway System

P.O. Box 1808
Washington, D.C. 20013

KARL A. STOECKER
SENIOR VICE PRESIDENT
FINANCE

920 15TH STREET, N.W.
TEL: (202) 628-4460

RECORDATION NO. 10642
JUL 18 1979 - 3 25 PM

July 17, 1979
60691

INTERSTATE COMMERCE COMMISSION
Mr. H. G. Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

No. 9-1034-199
Date JUL 17 1979
Fee \$ 50.00
ICC Washington, D. C.

Dear Mr. Homme:

I enclose seven original counterparts of each of the instruments described in paragraph (1) hereof for recordation pursuant to Section 11303 of Title 49, U. S. Code, (formerly Section 20c of the Interstate Commerce Act) and return, together with two original counterparts thereof which are for the Commission's files.

In accordance with 49 CFR Part 1116 covering the recordation of documents, I wish to advise as follows:

(1) The enclosed instruments, submitted concurrently for recordation as one document, are a Conditional Sale Agreement covering the purchase of certain railroad equipment, more fully described below, between Pullman Incorporated (Pullman Standard Division), 200 South Michigan Avenue, Chicago, Illinois 60604, and Ortner Freight Car Company, 2652 Erie Avenue, Cincinnati, Ohio 45208, Vendors, and Southern Railway Company, P. O. Box 1808, Washington, D.C. 20013, Purchaser, to which is attached an Agreement and Assignment between the Vendors and United States Trust Company of New York, 130 John Street, New York, New York 10038, Assignee, both instruments being dated as of June 15, 1979.

(2) The equipment covered by these documents is described as follows:

- 500 - 100-ton 4000 cu. ft. capacity Covered Hopper Cars (Pullman) bearing Purchaser's road numbers 85000 to 85499, inclusive, AAR designation LO;
- 23 - 100-ton 60'9" EOC Box Cars (Pullman) bearing Purchaser's road numbers 565300 to 565322, inclusive, AAR designation XL; and

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FEE OPERATION BR

100 - 100-ton 3600 cu. ft. capacity Automatic Bottom Dump Hopper Cars (Ortner) bearing Purchaser's road numbers 390200 to 390299, inclusive, AAR designation HTS.

Each unit of the equipment will be marked in letters not less than one inch in height as follows:

"OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

(3) After recordation, the original documents should be returned to David R. Willson, General Attorney, Southern Railway Company, P. O. Box 1808, Washington, D.C. 20013.

(4) The recordation fee of \$50 is enclosed.

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely,

K.A. Stoecker

K. A. Stoecker

Enclosures

7/18/79

Interstate Commerce Commission
Washington, D.C. 20423

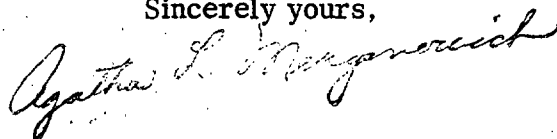
OFFICE OF THE SECRETARY

K. A. Stoecker
Senior Vice President
920 15th Street, N.W.
Washington, D.C. 20023

Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,
49 U.S.C. 20(c), on 7/18/79 at 3:25 pm ,
and assigned recordation number(s) 10642 + 10642-A

Sincerely yours,



H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

CONDITIONAL SALE AGREEMENT

Dated as of June 15, 1979

Between
each of

PULLMAN INCORPORATED
(Pullman Standard Division), and

ORTNER FREIGHT CAR COMPANY

and

SOUTHERN RAILWAY COMPANY

10642

RECORDATION NO. Filed 1425

JUL 18 1979 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of June 15, 1979

Between
each of

PULLMAN INCORPORATED
(Pullman Standard Division), and

ORTNER FREIGHT CAR COMPANY

and

UNITED STATES TRUST COMPANY OF NEW YORK,
As Agent

(Covering 500 Pullman Standard 100-ton 4,000 cu. ft. capacity
Covered Hopper Cars, 23 Pullman Standard 100-ton 60'9"
E.O.C. Box Cars and 100 Ortner 100-ton 3,600 cu. ft. capacity
Automatic Bottom Dump Hopper Cars)

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT, dated as of June 15, 1979 (hereinafter called the "Agreement"), among each of the corporations named in Item 1 of Schedule A hereto (the foregoing corporations being hereinafter called collectively the "Builders" and severally the "Builder" and collectively or severally the "Vendor" as the context may require as more particularly set forth in Article 1 hereof), and SOUTHERN RAILWAY COMPANY, a Virginia corporation (the "Railroad").

WHEREAS, the Builders severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the standard gauge rolling stock equipment described in Schedule B hereto (the "Equipment");

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and their respective successor or successors for the time being to their manufacturing properties and businesses, and, after any such assignment, both any assignees or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule A hereto, such term means any of or all such corporations, as the context may require. The parties hereto contemplate that this Agreement shall be assigned to United States Trust Company of New York, acting as agent under a Finance Agreement dated as of the date hereof (said agent being hereinafter sometimes called the "Agent" and said Finance Agreement being hereinafter called the "Finance Agreement"). The term "Builder", wherever used in this Agreement, means, both before and after any such assignment, the respective corporations (as to the units of equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

Additional agreements, if any, set forth in Schedule A hereto shall be deemed to be a part of this Agreement as fully as though set forth in full in this instrument.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such Equipment with respect to each Builder being hereinafter sometimes called "its Equipment") and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"). Each Builder represents and warrants that the design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 8 hereof) will be new railroad rolling stock equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of Equipment hereunder at any time after any event

of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond each Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, (i) any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom and (ii) if the aggregate Purchase Price (as defined in Article 4 hereof) of all Equipment previously settled for under this Agreement exceeds \$25,000,000, the Railroad may exclude herefrom any units of Equipment not theretofore settled for under this Agreement. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Builder or Builders thereof shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Except to the extent otherwise provided in the purchase order or orders covering the Equipment, if a Builder's failure to deliver Equipment so excluded from this Agreement results from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash within 30 days following the later of the delivery of or the presentation of the invoice for such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control

practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, on or prior to the Closing Date hereunder in respect of each such unit of Equipment acquired by the Railroad such inspector or an authorized representative or an officer of the Railroad shall execute and deliver to such Builder a certificate of acceptance (a "Certificate of Acceptance") stating, on behalf of the Railroad, that such unit or units have been inspected and accepted by the Railroad under this Agreement and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder to a common carrier, freight prepaid, for delivery to the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit; provided, however, that the Builder of such unit shall not thereby be relieved of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in certificates executed on behalf of the Railroad and each Builder with respect to the Equipment. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein for any unit of the Equipment shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided.

For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as such Builder and the Railroad may agree to. In the case of Pullman Incorporated (Pullman Standard Division) the number of Groups with respect to the Covered Hopper Cars shall not exceed two and with respect to the Box Cars shall not exceed one. In the case of Ortner Freight Car Company the number of Groups shall not exceed three.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may

designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined)
(i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices (including the supplemental invoice or invoices hereinafter provided for) presented in respect of such Closing Date (said invoiced prices being hereinafter called the "Invoiced Purchase Prices"), exceeds (y) the sum of \$20,000,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 equal consecutive annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices of all Groups less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

If this Agreement shall be assigned by the Builders, the obligations of the Railroad under subparagraph (a) of the preceding paragraph of this Article 4 and in respect of any supplemental invoice not paid by the Agent shall be unsecured obligations and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price, subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by a Builder at least 10 days prior to any subsequent Closing Date for settlement on such subsequent Closing Date or 10 days prior to the Repayment Date (as defined in the Finance Agreement), which date shall also be deemed a Closing Date hereunder, for any increase in the Purchase Price; it being understood and agreed by such Builder that any prior preliminary invoice or invoices presented by such Builder shall be in amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with its original purchase order.

The installments of the CSA Indebtedness shall be payable annually on August 1 in each year commencing August 1, 1980, to and including August 1, 1994 (or if any such date is not a business day on the next succeeding business day without interest or penalty), each such date being herein-after called a "Payment Date". The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9.875% per annum. Such interest shall be payable, to the extent accrued, semiannually on February 1 and August 1, in each year commencing February 1, 1980.

The term "Closing Date" with respect to any Group of the Equipment or any supplemental invoice shall mean such date (on or after July 1, 1979, and no later than August 1, 1980, [the "Cut-Off Date"]), not more than 15 business days following presentation by such Builder to the Railroad of the invoice and, in the case of a Group the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least two business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10.875% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of CSA Indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for

collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. Except as provided in Article 8 hereof, the Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as set forth in any amendment or supplement extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one-half inch in height, the words "OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in such Equipment and its rights under this Agreement. The Railroad will not place any such unit in

operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the identifying number of any unit of such Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation (other than the Vendor) to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Replacement Equipment; Prepayment of CSA Indebtedness.

A. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged, or damaged beyond economic repair in the opinion of the Railroad, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise other than by way of requisition for use by any government or instrumentality or agency thereof not exceeding 180 days, or if compliance with any law or regulation of any Federal, state or local governmental authority or legislative, executive, administrative or judicial body having authority or jurisdiction or with the interchange or other rules of the Association of American Railroads would require the change or replacement or addition of any equipment or appliance to any unit or units of the Equipment and such compliance would in the opinion of the Railroad be uneconomical (such occurrences being hereinafter called "Casualty Occurrences"), and in the event that the total Casualty Value (as hereinafter defined) of units that shall have suffered a Casualty Occurrence shall exceed \$50,000 (exclusive of units having suffered a Casualty Occurrence with respect to which a written notice shall have been given to the Vendor pursuant to this Article 8), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. When the aggregate Casualty Value of all units having suffered a Casualty Occurrence (exclusive of

units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this paragraph A of Article 8) hereunder shall exceed \$500,000 (or such lesser amount as the Railroad may elect), the Railroad, after it has knowledge of such event, shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

B. Replacement and/or Prepayment. Subject to the provisions of the third paragraph of this paragraph B of Article 8, any money paid to the Vendor pursuant to this Article 8 shall, as an officer of the Railroad may direct in a written instrument filed with the Vendor, be applied (so long as, to the actual knowledge of the Vendor, no event of default shall have occurred and be continuing), in whole or in part, to prepay installments of CSA Indebtedness or toward the cost of one or more other units of standard gauge railroad rolling stock equipment (other than work or passenger equipment), in each case first put into service no earlier than July 1, 1979, to replace units suffering a Casualty Occurrence. To the extent the Agent has available funds paid to it pursuant to Article 8 the Agent shall pay for any such replacement unit the lesser of 80% of the cost or fair value thereof, as evidenced by the certificate described in the next paragraph, and the Railroad shall pay the balance of the cost. If 80% of the cost or fair value (whichever is the lesser) of any such replacement equipment shall be in excess of such funds held by the Vendor hereunder, then such excess shall be a credit toward the Railroad's obligation to make future payments pursuant to this Article 8; provided, however, that such credit shall be allowed only to the extent such credit relates to a single unit of replacement equipment in respect of which the funds on deposit are not sufficient to pay 80% of the cost or fair value, whichever is the lesser. The fair value of any unit of Equipment theretofore owned and used by the Railroad or any affiliate of the Railroad shall be deemed to be the lesser of the actual fair value thereof or the cost thereof to the Railroad or such affiliate less depreciation accrued thereon computed by the straight-line method at the rate of 6-2/3% of said cost for each full year (but not pro rata for any part of a year) from the date on which the unit was first acquired by the Railroad or such affiliate to the date as of which such unit shall become replacement equipment hereunder. Such unit or units of replacement equipment shall have a remaining useful life at least as long as the Equipment described in

Schedule B hereto would have had on the date of such replacement but for the Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied on the next installment date for the payment of CSA Indebtedness occurring at least three business days following receipt by the Vendor of such written direction to reduce installments thereafter falling due pro rata.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is a unit of standard-gauge railroad rolling stock equipment (other than work or passenger equipment) first put into service not earlier than July 1, 1979, and has been marked as required by the provisions of this Article 8 and certifying the cost of such replacement unit and the fair value thereof, and that such replacement has a remaining useful life at least as long as the Equipment described in Schedule B would have had on the date of such replacement but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings and recordings have been made to perfect the interests of the Vendor therein.

So long as, to the actual knowledge of the Vendor, no event of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open-market commercial paper rated within the two highest grades by Standard and Poor's Corporation or by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of commercial banks in the United States of America having a capital and surplus aggregating at least \$50,000,000, in each case maturing not more

than one year from the date of such investment (such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If, to the actual knowledge of the Vendor, one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

C. Definitions of Casualty Value and Replacement Value. The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less an amount which bears the same ratio to the aggregate of all payments made by the Railroad under subparagraph (a) of the third paragraph of Article 4 hereof as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to paragraph B of this Article 8) as of the date such Casualty Value is determined bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to paragraph B of this Article 8) as of the date such Casualty Value is determined bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

D. Title to Replacement Units. The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all replacements of Equipment or parts thereof shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in a Builder having any liability or obligation with respect to any replacement unit or units or parts thereof not manufactured or sold by it. Title to all such replacement units and parts shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units and parts shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence in respect of which the Railroad shall have complied with its obligation hereunder with respect to the Casualty Value, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment or part thereof, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the CSA Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto and public liability insurance with respect to third party personal injury and property damage, in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it. The Railroad may self insure the Equipment to the same extent it self insures other equipment of a similar nature and provided such insurance is consistent with prudent industry practice.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. Except as provided in Article 8 hereof, the Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

Except as provided in Article 8 hereof, during the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. So long as any of the CSA Indebtedness shall be outstanding hereunder, on or before May 31 in each year, commencing with the calendar year which begins January 1, 1981, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (A) setting forth as at the last day of the preceding February the number, description and identifying numbers of all units of the Equipment (i) that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement), (ii) that are undergoing repairs or have been withdrawn from service for repairs (other than, in each case, running repairs), and (iii) such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (B) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the normal use thereof for equipment of like characteristics, including, without limitation, the use thereof upon the lines or routes owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines or routes owned or operated by any carrier controlled by, or under common control with, the Railroad, or over which it or any affiliate has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by a Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. In addition, the Railroad may transfer its rights hereunder with respect to the Equipment or any unit thereof to one or more wholly owned subsidiaries and may lease the Equipment to one or more affiliates or, under a written lease for a term not exceeding one year (including all renewal or extension options reserved to the lessee or lessor), to a responsible company, as determined by the Railroad, in any such case without being released from its obligations under this Agreement and subject to all the rights and remedies of the Vendor hereunder. The Railroad may receive and retain compensation for such uses and leases from other carriers or companies so using or leasing any unit or units of the Equipment. The Railroad will not permit any unit of the Equipment to be put in service involving the regular operation and maintenance thereof outside the United States of America, except in the usual interchange of traffic.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad, its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment until reimbursed therefor by the Railroad or otherwise shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to and a security interest in the Equipment hereunder, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured or caused to be manufactured by a Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed or caused or purported to be caused to be developed by any Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured or caused to be manufactured by a Builder or of any

design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed or caused or purported to be caused to be developed by a Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the originator or the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder as a part of or for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof either infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the appropriate Builder of any claim known to the Railroad from which liability may be charged against any Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform

each of and all the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits, and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of its obligations to deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to any Builder or the Vendor under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any

breach of any obligation of a Builder with respect to its Equipment or the specifications, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builder.

In the event of any such assignment or successive assignments by the Vendor, the Railroad will, if necessary and upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Railroad will (a) in connection with any settlement for the Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee by the Railroad in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required from the Railroad by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of its Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will except as provided in the Purchase Order for such Equipment, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the prime rate of interest of Morgan Guaranty Trust Company of New York or its successor in effect on the date such payment was due.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 the United States Code, as now constituted or as it may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceeding shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, , compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in

writing, pursuant to a court order or decree, by a trustee or trustees or a receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment which shall continue for 10 business days after notice thereof by the Vendor to the Railroad;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice or lapse of time, or both, could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time

is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor rightfully shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking pursuant to this

Agreement of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing and maintaining the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the

Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, maintaining, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, maintaining, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation in New York City, New York, Washington, D. C., and Richmond, Virginia, or a sale where fewer than 40 corporate offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad

(except to the extent of any surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its

expressly provided in the third paragraph of Article 3 hereof, supersedes all other agreements, oral or written, with respect to the Equipment except as provided in the last paragraph of Article 15. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Laws Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, or any financing statement in respect thereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, including any Federal law in respect of the same, and any rights arising out of the marking of the units of Equipment as provided in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties. Although this Agreement is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. Each Builder and the Railroad shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Agreement or to perform its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective

corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

SOUTHERN RAILWAY COMPANY,

by K.A. Foecker *FW*
Senior Vice President

[Corporate Seal]

Attest:

RT Allen
Assistant Secretary

PULLMAN INCORPORATED (Pullman Standard Division),

by E.J. Alington
Vice President

[Corporate Seal]

Attest:

Margaret M. Keenan
Assistant Secretary

ORTNER FREIGHT CAR COMPANY,

by J.L. Linton
Vice President

[Corporate Seal]

Attest:

F. Lumber
Assistant Secretary

DISTRICT OF COLUMBIA) ss.:

On this 17th day of July, 1979, before me personally appeared K. A. Stoecker, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN RAILWAY COMPANY, that the corporate seal of said Corporation is affixed to the foregoing instrument, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

C. O. Wagner

Notary Public

C. O. WAGNER

Notary Public

In and For the District of Columbia
My Commission Expires May 31, 1982

[NOTARIAL SEAL]

My Commission expires

STATE OF ILLINOIS,)
COUNTY OF COOK,) ss.:

On this 11th day of July, 1979, before me personally appeared E. L. Ahnquist, to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN INCORPORATED (Pullman Standard Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Janice K. Renteria

Notary Public

[NOTARIAL SEAL]

My Commission expires 8-7-79

STATE OF OHIO,)
) ss.:
COUNTY OF HAMILTON,)

On this 13th day of July, 1979, before me personally appeared J. L. ORTNER JR., to me personally known, who, being by me duly sworn, says that he is Vice President of ORTNER FREIGHT CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Howard E. Parr
Notary Public

[NOTARIAL SEAL]

My Commission expires

HOWARD E. PARR
Notary Public, State of Ohio
My Commission Expires August 20, 1983

SCHEDULE A

- Item 1: (a) Pullman Incorporated (Pullman Standard Division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.
- (b) Ortner Freight Car Company, a Delaware corporation, 2652 Erie Avenue, Cincinnati, Ohio 45208.
- Item 2: (a) Pullman Incorporated (Pullman Standard Division) (hereinafter in this Schedule A called "Pullman") warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements referred to in Article 2 of this Agreement and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by Pullman) and workmanship under normal use and service. Pullman's obligation under this Item 2(a) is limited to making good at its plant any part or parts of any unit of its Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to Pullman with transportation charges prepaid and which Pullman's examination shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on unit running gear and contact points to unit structures is restricted to one year or 25,000 miles, whichever first occurs; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with Pullman's written instructions and any applicable Federal, state or local laws or regulations. Pullman hereby assigns to the Railroad all Pullman's right, title and interest in, to and under any and all warranties, indemnities and similar agreements of the manufacturers, vendors and suppliers of equipment, materials and parts not manufactured by Pullman which are incorporated in or attached to its Equipment.

THE FOREGOING WARRANTY OF PULLMAN IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF PULLMAN EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 14 OF THIS AGREEMENT, and Pullman neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event shall Pullman be liable for indirect or consequential damages of any kind.

Pullman further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(a).

- (b) Ortner Freight Car Company (hereinafter in this Schedule A called "Ortner") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 2 of this Agreement and warrants that its Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by Ortner) and workmanship under normal use and service, Ortner's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of its Equipment which shall be returned to Ortner with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which Ortner's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF ORTNER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR ITS OBLIGATIONS OR LIABILITIES UNDER ARTICLES 2, 3, 4 AND 14 OF THIS

AGREEMENT, and Ortner neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. In no event shall Ortner be liable for special or consequential damages.

Ortner further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement nor any examination nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(b).

Schedule B

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Railroad Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Pullman Incorporated (Pullman Standard Division)	100-ton 4,000 cu. ft. capacity Covered Hopper Cars	N.C.P. 202, as amended by agreed changes, AAR Mechanical Designation: LO, P.O. No. 139195 Builder Spec. 3810	Butler, Pa.	500	85000-85499	Catlett, Va., between July-September 1979
Pullman Incorporated (Pullman Standard Division)	100-ton 60'9" E.O.C. Box Cars	N.C.P. 200, as amended by agreed changes, AAR Mechanical Designation: XL, P.O. No. 139406, Builder Spec. 3821	Bessemer, Alabama	23	565300-565322	Bessemer, Alabama, between August-September 1979
Ortner Freight Car Company	100-ton 3,600 cu. ft. capacity Automatic Bottom Dump Hopper Cars	N.C.P. 203, as amended by agreed changes, P.O. No. 136320, Spec. Sheet OC-5031, AAR Mechanical Designation: HTS	Covington, Kentucky	100	390200-390299	Walton, Kentucky August-December 1979